

and with opportunity for response, grants a stay.

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PART 758—EXPORT CLEARANCE REQUIREMENTS

Sec.

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§ 758.1 Export clearance requirements.

In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C.

(a) *Responsibility of licensee, exporter and agent.* (1) If you are issued a BXA license, or you rely on a License Exception described in part 740 of the EAR, you are responsible for the proper use of that license or License Exception and for the performance of all of its terms and conditions.

(2) If you export without either a license issued by BXA or a License Exception, you are responsible for determining that the transaction is outside the scope of the EAR or the export is designated as "No License Required" as described in paragraph (a)(3) of this section.

(3)(i) *"No License Required"*. Items that are listed on the Commerce Control List (CCL) (Supplement No. 1 to part 774 of the EAR) but that do not require a license by reason of the Country Chart contained in Supplement 1 to part 738 of the EAR, and items designated EAR99 (See § 734.3(c) of the

EAR entitled "Scope of the EAR") must be designated as "NLR", or "no license required", on your shipping documents in accordance with the provisions of this part.

(ii) *NLR notation.* Entering the symbol NLR is a representation to the U.S. Government that the items being exported are listed on the CCL but do not require a license by reason of the Country Chart or that they are within the scope of EAR99 (See § 734.3(c) of the EAR entitled "Scope of the EAR"); that they do not require a license under General Prohibitions One (Exports and Reexports), Two (Parts and Components Reexports), or Three (Foreign-produced Direct Product Reexports); that General Prohibitions Four through Ten do not apply to the given export, reexport, or other activity; and that the items are subject to the EAR.

(4) *License Exception symbol.* Entering a License Exception symbol on an export control document is a representation to the U.S. Government that the transaction meets all of the terms and conditions of the License Exception cited. (See part 740 of the EAR for details regarding License Exceptions.)

(5) *Software and technology not subject to the EAR.* If you are exporting software or technology that is outside the scope of the EAR as described in §§ 734.7 through 734.11 of the EAR, you may use the symbol TSPA. Use of this symbol is optional; however, if you enter it on an export control document, you are making a representation to the U.S. Government that the technology or software is outside the scope of the EAR.

(b) *Forwarding agent*—(1) *Authorizing a forwarding agent.* A forwarding agent is a person the exporter authorizes to perform services that facilitate the export described on the Shipper's Export Declaration (SED). The agent must be authorized to act on behalf of the exporter either for the specific transaction for which the agent is submitting the SED or under a general power of attorney. The Foreign Trade Statistics Regulations of the Bureau of the Census (15 CFR part 30) provide the specific requirements for obtaining authorization as a forwarding agent.

(2) *Forwarding agent as licensee.* If the forwarding agent is appointed at the suggestion of a foreign buyer, the seller

may insist that the agent apply for the export license. See § 748.5(a)(1) of the EAR which defines parties to a transaction.

(3) *Record and proof of agent's authority.* The power-of-attorney or other authorization from the exporter must be retained on file in the forwarding agent's office while the authorization is in force and for a period of five years after the last action taken by the forwarding agent under the authority. During this retention period, the forwarding agent must make its delegation of authority from the exporter available for inspection on demand, in accordance with the provisions of § 762.6 of the EAR. This recordkeeping and inspection requirement also applies to any redelegation of the forwarding agent's authority and to any person to whom the forwarding agent redelegates its authority. (For further recordkeeping requirements see part 762 of the EAR).

(c) *Responsibility for compliance.* Acting through a forwarding agent, or other agent or delegation or redelegation of authority, does not relieve anyone of responsibility for compliance with the EAR. Forwarding agents, carriers and others who participate in transactions that are subject to the EAR are also responsible for complying with the EAR.

(d) *Exports by U.S. Mail*—(1) *Exports made under a license issued by BXA.* Before making an export by U.S. Mail that is authorized by a license issued by BXA, you must enter the license number on the address side of the parcel and submit a properly executed SED to the post office at the place of mailing, when required by the regulations in this part and/or the Foreign Trade Statistics Regulations of the U.S. Bureau of the Census.¹

¹The Shipper's Export Declaration (U.S. Department of Commerce form 7525-V) may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or it may be privately printed. Form 7525-V-Alt (Intermodal), must be privately printed. Privately printed forms must strictly conform to the official form in all respects. Samples of these forms may be obtained from the Bureau of the Census, Washington, DC 20233, local cus-

(2) *Shipments without a license.* The requirements of this paragraph apply whenever you export items that do not require a license under the EAR. These requirements apply regardless of whether your transaction does not require a license because the item you are going to ship is encompassed with EAR99 (See § 734.3(c) of the EAR entitled "Scope of the EAR"), because the item, although on the list, does not require a license to be exported to the destination to which you intend to ship or because the transaction qualifies for a License Exception as described in part 740 of the EAR.

(i) *Shipments to Canada for consumption therein.* An SED is not required for exports of items to Canada if the items are for consumption in Canada and the export transaction does not require a license from BXA. Note that if the item you are exporting to Canada is controlled by another government agency, the regulations of that agency may require you to file a SED.

(ii) *Shipments to Puerto Rico or U.S. territories or possessions.* Exports of items to Puerto Rico or the U.S. territories or possessions do not require a license issued by BXA. However, the regulations of the Census Bureau (15 CFR part 30) may still require you to file a SED.

(iii) *Shipments valued over \$500.* When mailing an item from one business concern to another where the total value of the items being shipped exceeds \$500, you must present an executed SED to the post office at the place of mailing unless the EAR or the Bureau of the Census Foreign Trade Statistics Regulations specifically provide an exception to this requirement. If either the exporter or recipient is not a business concern, no SED is required.

(iv) *Designation on SED and/or parcel.* If you are exporting an item that is encompassed within EAR99 (See § 734.3(c) of the EAR entitled "Scope of the EAR"), or one that is listed on the CCL but no license is required to the destination to which you are shipping, or you are exporting pursuant to a License Exception, as described in part

toms offices, and the U.S. Department of Commerce District Offices.

740 of the EAR, you must enter the appropriate symbol indicating the absence of a license requirement either NLR, meaning "No License Required" or the applicable License Exception symbol, on the SED and on the address side of the parcel along with the phrase "Export License Not Required." If your transaction is one for which you are not required to file a SED, you must enter the appropriate symbol NLR, meaning no license required or of the applicable License Exception on the address side of the parcel along with the phrase "Export License Not Required." If you are exporting technology or software that is outside the scope of the EAR as described in § 734.7 through 734.11 you may enter the symbol TSPA.

(A) By entering the symbol NLR you are representing to the U.S. Government that the items you are exporting are listed on the CCL (See Supplement No. 1 to part 774 of the EAR) but do not require a license by reason of the Country Chart (Supplement No. 1 to part 738 of the EAR) or because they are encompassed within the EAR99 (See § 734.3(c) of the EAR entitled "Scope of the EAR"); that they do not require a license under General Prohibitions One (Exports and reexports of controlled items to listed countries), Two (Parts and Components Reexports), or Three (Foreign Produced Direct Product Reexports); that General Prohibitions Four through Ten do not apply to the given export, reexport, or other activity; and that the item is subject to the EAR.

(B) By entering a License Exception symbol, you are representing to the U.S. Government that your transaction meets all of the terms and conditions of the License Exception you are using. (See part 740 of the EAR for details regarding License Exceptions).

(C) By entering the symbol TSPA you are representing to the U.S. Government that the technology or software you are exporting is outside the scope of the EAR.

(v) *Gift parcels.* If you are sending a gift parcel pursuant to the requirements of § 746.16 of the EAR, you must enter the phrase "Gift—export license not required" on any customs declara-

tion documents and on the address side of the parcel.

(vi) *Software and technology.* If you are exporting software or technology, the export of which is authorized under the License Exceptions in § 740.6 or § 740.13 of the EAR, you do not need to make any notation on the package. If you are exporting software or technology that is outside the scope of the EAR, check to see if any other agency's regulations require specific markings on the package.

(3) When you enter any of the symbols or phrases referred to in paragraph (d) of this section on the documents or packages, you are certifying to the post office and to BXA that you are exporting the package in compliance with all of the terms and provisions of an applicable License Exception or other authority to export.

(e) *Exports by means other than U.S. Mail.* (1) When SEDs are required to be submitted, the exporter or the exporter's agent must present a duly executed SED to the exporting carrier before the vessel, aircraft, or overland transport depart.

(i) Exemptions to SED. A SED is not required for:

(A) Any shipment, other than a shipment made under a license issued by BXA or shipments to Cuba, Iran, Iraq, Libya, North Korea, Sudan or Syria if the shipment is valued at \$2,500 or less per Schedule B Number. The Schedule B number of an item is shown in the current edition of the Schedule B, *Statistical Classification of Domestic and Foreign Commodities Exported from the United States*. As used in this paragraph (e), "shipment" means all items classified under a single Schedule B number (or Harmonized Tariff Schedule number if the Schedule B number is not available), shipped on the same carrier, from one exporter to one importer. The Foreign Trade Statistics Regulations of the Bureau of the Census (15 CFR part 30) shall govern the valuation of items when determining whether a shipment meets the \$2,500 threshold of this paragraph.

(B) Any shipment reported under the provisions of the Monthly Reporting Procedure (§ 758.3(o) of this part); or

(C) Any shipment made under any other exception to the SED requirements found in Subpart B of the Bureau of the Census' Foreign Trade Statistics Regulations.

(D) Exports of tools of trade under License Exception TMP or BAG.

(ii) *Exceptions from SED requirements.*

(A) *Statement on shipping documents.* If you are exempt by paragraph (e)(1) of this section from the requirement of filing a SED, the Bureau of the Census Foreign Trade Statistics Regulations (FTSR) (15 CFR 30.50), require you to make a statement on the bill of lading, air waybill, or other loading document describing the basis for the exemption and referencing the specific section of the FTSR where the exemption is provided, unless the exemption is based on value and destination. If the exemption is based on the value and destination of your shipment, you must state the basis for the exemption, but you do not have to cite a reference to the specific section of the FTSR containing the exemption.

(B) *Monthly reporting procedures.* (1) All forwarders or brokers who use the monthly reporting procedures described in FTSR § 30.39 (15 CFR 30.39) on behalf of exporters who are not themselves exempt from the individual filing requirement must also include on the bill of lading, air waybill (including house air waybill), or other loading document either the number of and expiration date of an export license issued by BXA, or the appropriate symbol indicating the inapplicability of an export license requirement (either NLR, meaning "No License Required" or of the applicable License Exception, from part 740 of the EAR).

(2) The notation required by paragraph (e)(1)(ii)(B)(1) of this section applies to any bill of lading or other loading document, including one issued by a consolidator (indirect carrier) for an export included in a consolidated shipment. However, this requirement does not apply to a "master" bill of lading or other loading document issued by a carrier to cover a consolidated shipment. The bill of lading or other loading document must be available for inspection along with the goods or data prior to lading on the carrier.

(2) *Export carrier SED information.* The exporting carrier, or if none is utilized, the exporter or agent is responsible for the accuracy of the following items of information (where required) on the SED:

(i) Name of carrier (including flag of vessel),

(ii) U.S. Customs port of export,

(iii) Method of transportation,

(iv) Foreign port of unloading,

(v) Bill of lading or air waybill number, and

(vi) Whether or not containerized.

(3) *Exports not requiring a license.* Even if your shipment does not require a license from BXA, it may still require a SED. Before shipping, check the Bureau of the Census Foreign Trade Statistics Regulations for the complete SED requirements.

(f) *Shipments transiting Canada en route to other countries—(1) Shipments moving under individual SED.* When an export to a foreign country is made in transit through Canada, and the shipment is one for which an individual SED is required by this part 758, the U.S. exporter must submit to the Canadian Customs authorities at the Canadian port of entry a copy of the U.S. SED, Form 7525-V, certified by the exporter as "A True Copy" of the original SED.

(2) *Shipments for which individual SED are not required.* When an export to a foreign country is made in transit through Canada, and the shipment is one for which an individual SED is not required because:

(i) The forwarder or broker is authorized to report export information to Census by means other than an individual SED; or

(ii) The shipment qualifies for a specific exemption (listed in Subpart D of the Census Bureau Foreign Trade Statistics Regulations), the forwarder or broker must include the number of and expiration date of the license issued by BXA, or the appropriate symbol indicating the inapplicability of an export license requirement (either NLR, meaning "No License Required" or the applicable License Exception from part 740 of the EAR on the bill of lading or other loading document as directed in paragraph (e)(2) of this section). The

bill of lading or other loading document properly annotated with respect to the FTSR SED exemption or exception, along with the license authorization, when required, must be displayed to the Canadian Customs authorities at the Canadian port of entry and a copy provided, if requested by the Canadian authorities.

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§ 758.2 Use of export license.

(a) *License valid for shipment from any port.* A license issued by BXA authorizes exports from the United States from any U.S. port of export unless the license notes otherwise. Items that leave the United States at one port, cross adjacent foreign territory, and reenter the United States at another port before final export to a foreign country will be treated as an export from the last U.S. port of export.

(b) *Shipments against expiring license.* (1) Any item that has not departed from the last U.S. port of export by midnight of the expiration date of the license may not be exported under that license unless the shipment meets the requirements of paragraph (b)(1)(i) or (ii) of this section.

(i) BXA grants an extension; or
(ii) Prior to midnight of the expiration date of the license, the items:

(A) Were laden aboard the vessel; or
(B) Were located on a pier ready for loading and not for storage, and were booked for a vessel that was at the pier ready for loading; or

(2) When the vessel is expected to be available at the pier for loading before the license expires, but exceptional and unforeseen circumstances delay it, the items may be exported without an extension of the license, if in the judgment of the U.S. Customs Service or BXA, undue hardship would otherwise result.

(c) *Reshipment of undelivered items.* If the consignee does not receive an export made under a license because the carrier failed to deliver it, the exporter may reship the same or an identical item subject to the same limitations as to quantity or value as described on the license to the same consignee and

destination under the same license. Before reshipping, the exporter must submit to the BXA satisfactory evidence of the original export and of the delivery failure, together with a satisfactory explanation of the delivery failure. If an item is to be reshipped to any person other than the original consignee, the shipment is deemed to be a new export and is subject to all current EAR regarding the specific item and destination.

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§ 758.3 Shipper's Export Declaration (SED).

(a) *SED presentation requirement.* Both the Foreign Trade Statistics Regulations of the Census Bureau (15 CFR part 30) and these Export Administration Regulations require that SED's be submitted to the U.S. Government. There are a few exceptions to this rule, but if you are required to submit a SED you must prepare it in accordance with the rules of the Foreign Trade Statistics Regulations (FTSR) and present the number of copies specified in the FTSR at the port of export.

(b) *SED is a statement to the U.S. Government.* Your SED is a statement to the U.S. Government in which you assert that all of the information shown on the SED is true. You may execute and submit the SED only if you are the exporter or the duly authorized forwarding agent of an exporter.

(c) *Limitation on time when SED may be used.* No one may use a SED to export, or facilitate or effect an export, after the expiration of the applicable license or after the termination of the applicable License Exception or provisions of the EAR that authorize export without a license, except as provided in § 750.7(f) (License validity period) of the EAR and § 758.2(b) (Shipments against expiring license) of this part.

(d) *Additional copies of the SED.* You are required to submit additional copies of the SED when:

(1) BXA or one of its component offices asks you to send it copies of the SED for exports:

(i) Authorized by a license (see paragraph (l) of this section);